

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
(ON APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY)

HARRISON COUNTY COMMISSION,  
ROGER DIAZ, PRESIDENT,

Petitioner,

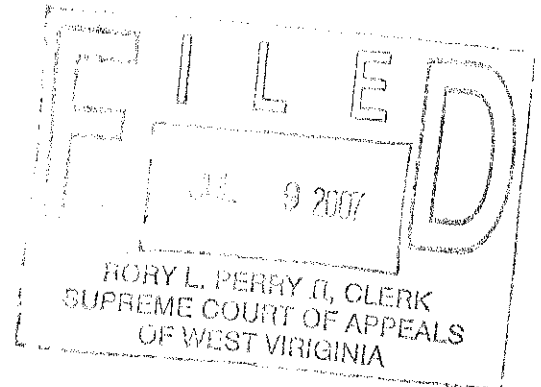
v.

CASE NO. 33381

(Harrison County Civil Action No. 05-C-493-3)

HARRISON COUNTY ASSESSOR,  
CHERYL ROMANO, ASSESSOR,

Respondent.



**APPELLANT'S BRIEF**

Michael J. Florio (WV ID #6313)  
Florio Law Offices  
333 East Main Street  
Clarksburg, WV 26301  
(304) 626-3000

Counsel for Appellant,  
Harrison County Commission  
Roger Diaz, President

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**I.**  
**THE KIND OF PROCEEDING AND NATURE**  
**OF THE RULING IN THE LOWER TRIBUNAL**

The Harrison County Commission (hereinafter “the County Commission”), filed a petition for writ of mandamus regarding the question of whether the Harrison County Assessor (hereinafter “the Assessor”) must obtain the advice and consent of the County Commission before appointing an employee to be paid from the Assessor’s revolving property valuation fund (hereinafter “the Valuation Fund”). The Assessor filed a counter-petition for writ of mandamus compelling the County Commission to cease its alleged interference with the operation of the Assessor’s office.

The Circuit Court<sup>1</sup> found that advice and consent of the County Commission is not required in connection with the appointment of employees of the Assessor’s office to be paid from the Valuation Fund. Thus, the Circuit Court denied the County Commission’s petition for writ of mandamus, and granted the Assessor’s counter-petition for writ of mandamus. This Court granted the petition for appeal, and this brief sets forth the basis for the reversal of the Circuit Court’s ruling.

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<sup>1</sup> The Honorable Judges of the Circuit Court of Harrison County voluntarily recused themselves from this proceeding. This Court assigned the Honorable David R. Janes, Judge of the Sixteenth Judicial Circuit, to preside.

**II.**  
**STATEMENT OF THE FACTS OF THE CASE**

The facts of the case are simple, and undisputed. The Assessor has largely unfettered access to the Valuation Fund. The Assessor appoints employees to be paid out of the Valuation Fund without the advice or consent of the County Commission. These same employees work in the County Commission's facility, utilize County Commission property, and are subject to the County Commission's policies, practices, and procedures.

**III.**  
**THE ASSIGNMENT OF ERROR RELIED UPON ON APPEAL AND THE**  
**MANNER IN WHICH IT WAS DECIDED IN THE LOWER TRIBUNAL**

Whether a county assessor must obtain the advice and consent of the county commission before appointing employees to be paid from the county assessor's revolving property valuation fund.

The Circuit Court answered this question in the negative.

**IV.**  
**POINTS AND AUTHORITIES RELIED UPON,**  
**A DISCUSSION OF THE LAW, AND THE RELIEF PRAYED FOR**

**A.     Introduction.**

This appeal will clarify an issue that already has arisen in two Circuit Courts, with contradictory results. In 2004, the Circuit Court of Barbour County ruled that Section 7-7-7 and Section 11-1C-8 of the West Virginia Code are not mutually exclusive nor inconsistent, and applied both of them in finding that an employee of the Barbour County Assessor paid via the assessor's revolving property valuation fund is a joint employee of the Barbour County Assessor and the Barbour County Commission, requiring the County Commission to approve of the appointment of the employee.<sup>2</sup> Here, the Circuit Court reached the opposite conclusion, opting to disregard the relevant language of Section 7-7-7 and to apply only Section 11-1C-8.

**B.     The Relevant Statutes.**

The statutes in question come from distinct Chapters of the West Virginia Code. Chapter 7, titled "County Commissions and Officers," contains 23 separate articles regarding the duties and authorities of county commissions and constitutional officers. The county assessor is mentioned in multiple portions of Chapter 7, and clearly is an integral part of the overall workings of the county commission.

The most pertinent provision for present purposes is Section 7-7-7 of the West Virginia Code. Among other things, Section 7-7-7 states as follows:

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<sup>2</sup> A copy of the relevant order is from the case of Haller v. Barbour County Commission is attached hereto as "Exhibit A." Coincidentally, the undersigned counsel represented Ms. Haller at the time the attached order was entered. Ms. Haller was later represented by the Assessor's counsel in this case.

The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice of the county commission, may appoint and employ, to assist them in the discharge of their official duties for and during their respective terms of office, assistants, deputies and employees.

This Court previously has observed that the relevant language means what it says – that employment of assistants may occur only after the county officer has obtained the advice and consent of the county commission. Webster County Commission v. Clayton, 206 W. Va. 107, 108, 522 S.E.2d 201, 202 (1999) (syl. pt. 4).

In the present case, the Assessor attempts to supersede the relevant language of Section 7-7-7 by relying upon a statute found in Chapter 11 of the West Virginia Code, titled “Taxation.” Within Article 1C, titled “Fair and Equitable Property Valuation,” appears a provision creating the revolving valuation fund, which has an express purpose of “financ[ing] the extra costs associated with the valuation and training mandated by” Article 1C.

Section 11-1C-8(a) provides that the Valuation Fund “shall be used exclusively to fund the assessor’s office.” Section 11-1C-8(a) also states that no person whose salary is paid from the Valuation Fund may be hired without the approval of the valuation commission. Section 11-1C-8(a) concludes with the following sentence: “Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of the employment by the valuation commission.”



Section 11-1C-8(d) of the West Virginia Code states that monies paid to the Valuation Fund “shall be available to and may be spent by the Assessor without prior approval of the County Commission, which may not exercise any control over the fund.”

**C. The Circuit Court’s Ruling.**

The Circuit Court found that Section 7-7-7 and Section 11-1C-8 are in conflict, and that Section 11-1C-8 “expressly exclude[s] the County Commission from any involvement in the County Assessor’s Valuation Fund, including, but not limited to, the employment of individuals pursuant to the Valuation Fund.” (Order of 9/18/06 at 3 (¶ 6).) The Circuit Court reasoned that the provisions of Section 7-7-7 are general in nature, and that the more specific provisions of Section 11-1C-8 control.

**D. The Relevant Principle Of Statutory Construction.**

In disregarding the unambiguous provisions of Section 7-7-7 of the West Virginia Code, the Circuit Court “applie[d] the general rule of statutory construction which requires that a specific statute be given precedence over a general statute relating to the same subject matter when the two (2) cannot be reconciled.” (Order of 9/18/06 at 3-4 (¶ 7) (citing UMWA by Trumka v. Kingdon, 174 W. Va. 330, 331, 325 S.E.2d 120, 120 (1984) (syl. pt. 1)).) The fact that this principle applies only where the two provisions cannot be reconciled means that, before embracing a “specific” statute and ignoring a “general” one, there first must be a finding that the provisions are in conflict.

**E. The Statutes Can And Should Be Reconciled.**

The Circuit Court’s ruling reveals no effort to reconcile the two statutes. Instead, the Circuit Court, without ever quoting in its Order the relevant language of Section 7-7-7, declares that

Section 7-7-7 is “general,” that Section 11-1C-8 is “specific,” and that the language of Section 11-1C-8 controls.

Nevertheless, the two statutes can be reconciled. Section 7-7-7 permits the Assessor to “appoint and employ” employees with the advice and consent of the County Commission. Section 11-1C-8(a) authorizes the Assessor to “employ” assistants upon the approval of the employment by the valuation commission.

For the purposes of attempting to reconcile Section 7-7-7 and Section 11-1C-8(a), the presence of the word “appoint” is critical. Although the two statutes apparently conflict regarding the ability of the County Commission to exercise advice and consent as to the ongoing “employment” of such persons, there is no conflict regarding the ability of the County Commission to exercise its authority regarding the initial “appointment.”

The Assessor believes that this is merely a matter of semantics, and that as a practical matter the term “appoint” as it appears in Section 7-7-7 conflicts with the term “employ” as it appears in Section 11-1C-8(a), because Section 11-1C-8(a) suggests that the valuation commission’s approval of the employment will be contemporaneous with the initial appointment. In practice, however, the approval from the valuation commission does not always occur at the outset of the employment. In the Haller case, cited in footnote 1, the Barbour County Assessor initially attempted to terminate Ms. Haller based upon the fact that no approval of her employment ever had been obtained from the valuation commission.

The simple reality is that there is no conflict between the statutes as to the presence of the word “appoint.” Thus, the two statutes may be reconciled. Section 7-7-7 gives the County Commission the ability to provide its advice and consent as to the proposed appointment. Section

11-1C-8(a) of the West Virginia Code authorizes the Assessor to thereafter employ – and to continue to employ – the employee without any further input from the County Commission after approval of the employee is obtained from the valuation commission.

Such a finding makes sound practical sense. The Harrison County Commission, like the county commissions in most of the other 54 West Virginia counties, has a central location at which most if not all of its employees work or report for work. The Harrison County Commission has certain legal and moral responsibilities to these employees.

The Assessor's office is located within this facility. The notion that the Assessor may introduce any person into this workplace over the objection of the Harrison County Commission potentially makes it far more difficult for the County Commission to achieve its objectives and to fulfill its obligations.

For example, the County Commission is potentially responsible for any sexual harassment in which the Assessor's employee engages within the County Commission's facility. If the Assessor wishes to hire a person with a history of sexual harassment in the workplace, the County Commission (under the position advocated in this case by the Assessor) has no ability to prevent the appointment of this person – even though the County Commission will surely be sued if one of its employees is later sexually harassed by the Assessor's appointee.

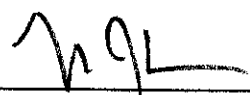
As currently drafted, the relevant statutes appear to be in conflict as to whether the County Commission may take action after the valuation commission approves the employment. However, Section 7-7-7 should still control as to the initial appointment, especially since the persons appointed by the Assessor will become coworkers of the many employees for whom the County Commission is responsible on a daily basis.

This proposed reconciliation of the two statutes permits both to have import and meaning, and renders neither a nullity as to the initial appointment of an employee. This proposed reconciliation also advances the overall interests of the County Commission its employees.

V.  
CONCLUSION

For the reasons set forth above, the appellant, Harrison County Commission, Roger Diaz, President, requests that this Court reverse the judgment entered by the Circuit Court of Harrison County and remand this action with an instruction that the Circuit Court grant to petition for writ of mandamus and deny the counter-petition for writ of mandamus.

Dated the 6<sup>th</sup> day of July, 2007.

  
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Michael J. Florio (WV ID #6313)  
Florio Law Offices  
333 East Main Street  
Clarksburg, WV 26301  
(304) 626-3000

Counsel for Appellant,  
Harrison County Commission  
Roger Diaz, President

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
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HARRISON COUNTY COMMISSION,  
ROGER DIAZ, PRESIDENT,

Petitioner,

v.

CASE NO. 33381  
(Harrison County Civil Action No. 05-C-493-3)


HARRISON COUNTY ASSESSOR  
CHERYL ROMANO, ASSESSOR,

Respondent.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of July, 2007, I served the foregoing  
"Appellant's Brief" upon counsel for the respondent by depositing a true copy thereof in the United  
States mail, postage prepaid in an envelope addressed as follows:

Gregory H. Schillace, Esquire  
Schillace Law Office  
Huntington Bank Building, Suite 303  
P.O. Box 1526  
Clarksburg, WV 26302-1526

  
\_\_\_\_\_  
Michael J. Florio (WV ID #6313)  
Florio Law Offices  
333 East Main Street  
Clarksburg, WV 26301  
(304) 626-3000

Counsel for Appellant,  
Harrison County Commission  
Roger Diaz, President

## IN THE CIRCUIT COURT OF BARBOUR COUNTY, WEST VIRGINIA

LINDA M. HALLER,

Plaintiff,

v.

CIVIL ACTION NO. 04-C-58  
(JUDGE ALAN D. MOATS)BARBOUR COUNTY COMMISSION, and  
SANDRA D. SIPE,

Defendants.

ORDER

On the 3rd day of December, 2004, the parties to this action appeared before the Court in connection with the motion to dismiss or, in the alternative, the motion for summary judgment filed by the Barbour County Commission. After considering the written materials submitted by the parties and the arguments of counsel, the Court makes the following findings:

1. The plaintiff, Linda M. Haller, was employed by the Barbour County Assessor.
2. Although the plaintiff's wages were funded by the State Valuation Fund, the Barbour County Commission actually paid the plaintiff's wages, and Barbour County Commission reported her earnings to the Internal Revenue Service through an IRS Form W-2.
3. The Barbour County Commission also was identified as the plaintiff's employer for the purposes of unemployment compensation.
4. Section 7-7-7 of the West Virginia Code states that "[t]he county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice and consent of the county commission, may appoint and

EXHIBIT A

employ, to assist them in the discharge of their official duties for and during their respective terms of office, assistants, deputies and employees." (Emphasis added.)

5. Section 11-1C-8(a) of the West Virginia Code establishes a revolving valuation fund, "which shall be used exclusively to fund the assessor's office." Under Section 11-1C-8(a), "[n]o persons whose salary is payable from the valuation fund shall be hired under this section without the approval of the valuation commission."

6. "A statute should be so read and applied as to make it accord with the spirit, purposes, and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law applicable to the subject-matter, whether constitutional, statutory, or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith." Board of Trustees of Firemen's Pension & Relief Fund v. The City of Fairmont, 215 W. Va. 366, 371, 599 S.E.2d 789, 794 (2004) (quoting State v. Snyder, 64 W. Va. 659, 63 S.E. 385 (1908) (syl. pt. 5)).

7. In light of the forgoing, the Court finds that Section 11-1C-8(a) of the West Virginia Code and Section 7-7-7 of the West Virginia Code are not mutually exclusive, and must be read in a manner that gives both provisions appropriate force and effect.

8. Based upon the language of these two provisions, the Court believes that the overall legislative scheme reflects an intention and desire by the Legislature that the Barbour County Commission possesses the authority as a threshold matter to approve the employment of any person whose work falls within the scope of Section 11-1C-8(a). Subsequently, the employment likewise is subject to the approval of the state valuation commission, pursuant to Section 11-1C-8(a).



9. Although the Barbour County Commission contends that it did not actually approve the employment of the plaintiff, the Court finds that the Barbour County Commission's payment of wages to the plaintiff during the course of her employment reflects a tacit acknowledgment on the part of the Barbour County Commission that her employment had been approved.

Based upon the findings set forth above the Court hereby rules that the motion to dismiss, or, alternatively, motion for summary judgment filed by the Barbour County Commission is and shall be DENIED.

The objections and exceptions of the Barbour County Commission are hereby noted and preserved.

The Clerk of the Court is directed to send a certified copy of this order to all counsel of record at the addresses set forth below.

ENTER: 12-20-04

**ENTERED**

DEC 20 2004 *Amel*

BOOK 40 PAGE 460  
CLERK, CIRCUIT COURT, BARBOUR CO

*Alan D. Moats*  
Judge Alan D. Moats

A TRUE COPY FROM THE RECORD:

ATTEST: *JERRY LANTY*  
CIRCUIT CLERK OF BARBOUR COUNTY

BY: *Alan D. Moats*  
DEPUTY CLERK

Order Drafted and Submitted By:



Michael J. Florio (WV ID #6313)  
 Florio Law Offices  
 333 East Main Street  
 Clarksburg, WV 26301  
 (304) 626-3000

Counsel for the Plaintiff,  
 Linda M. Haller

Order Reviewed and Approved By:



Jeffrey M. Cropp (WV ID #8030)  
 Steptoe & Johnson PLLC  
 Bank One Center, 6th Floor  
 P.O. Box 2190  
 Clarksburg, WV 26302-2190

Counsel for Defendants,  
 Barbour County Commission and Sandra D. Sipe